



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2003

Ms. Maureen E. Ray
Special Assistant Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

OR2003-8609

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191904.

The State Bar of Texas (the "state bar") received a request for "an electronic copy of the entire 'disciplinary' database (all fields) maintained by the State Bar." In requesting this ruling, you make arguments regarding both the database program and the data that it contains. You state that "[t]he data component of the database is an intermingling of public information and information that has been declared confidential pursuant to statute. [T]he requestor has already been provided with public information under a previous request." *See* Gov't Code § 552.232 (outlining procedures governmental body may follow if governmental body does not wish to release information again in response to repetitious or redundant requests). You inform us that some of the data is subject to the previous determination issued in Open Records Letter No. 2003-6211 (2003). *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 at 6-9 (2001) (criteria of previous determination regarding specific categories of information). You contend that the remaining data and the database program are excepted from disclosure under sections 552.101, 552.107, 552.110, 552.111, 552.136, and 552.139 of the Government Code.¹ In addition, pursuant to section 552.305 of the Government Code, you have notified third party Advantage of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305

¹Although you also raise section 552.136 of the Government Code concerning information related to security issues for computers, the 78th Legislature recently renumbered that provision as section 552.139. *See* Act of May 21, 2003, 78th Leg., R.S., ch. 1275, § 2(76), Tex. Sess. Laws Serv. 4144 (Vernon) (to be codified at Gov't Code § 552.139).

(permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.²

We begin by addressing the database program. You contend that "components of the database at issue here, not including the data itself, have no significance other than their use as tools for the maintenance, manipulation, or protection of public property." In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Open Records Decision No. 581 (1990) (construing predecessor statute). We understand you to assert that, like the computer-related information at issue in that decision, the database program at issue here functions solely as a tool to maintain, manipulate, or protect public property and has no independent relevance. *Id.* at 6. After considering your arguments and carefully reviewing the submitted information, we agree that the database program represented by the submitted records is the type of information that was at issue in Open Records Decision No. 581. As such, this type of information is not public information as defined by section 552.002 of the Government Code, and, therefore, is not subject to the Public Information Act (the "Act"). Thus, it need not be released in response to this request. As we are able to reach this conclusion, we need not address your remaining arguments regarding the database program.

We turn now to your arguments regarding the data that has not been released and is not subject to the previous determination issued in Open Records Letter No. 2003-6211. You contend that "all information in the database relating to grievances which have been dismissed, grievances which are pending, and private sanctions is not subject to the Act." Section 81.033(a) of the Government Code provides that:

[a]ll records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552.

²We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 81.033(a). You contend that portions of the requested information are confidential under Rules 2.15 and 15.10 of the Texas Rules of Disciplinary Procedure.³ You argue that, pursuant to section 81.033(a) of the Government Code, portions of the information made confidential under these provisions are not subject to disclosure under the Act. Rule 2.15 of the Texas Rules of Disciplinary Procedure provides as follows:

All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the court. If there is a finding of Just Cause and any Sanction *other than a private reprimand* (which may include restitution and payment of Attorneys' Fees) imposed by agreement of the Respondent, all of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for attorney Disability screening and determination must remain confidential.

TEX. R. DISCIPLINARY P. 2.15, *reprinted in* TEX. GOV'T CODE ANN. tit. 2, subtit. G, App. A-1 (emphasis added). Rule 15.10 of the Texas Rules of Disciplinary Procedure provides as follows:

All communications, written and oral, and all other materials and statements to or from the Commission, Chief Disciplinary Counsel, the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of Inquiries and Complaints are absolutely privileged.

TEX. R. DISCIPLINARY P. 15.10.

You contend that "information in the database pertaining to dismissed grievances, pending grievances, and confidential sanctions such as private reprimands, referrals for rehabilitation without a sanction, and referrals and documents related to disability suspensions are confidential and privileged by law." Based on your arguments and our review of the submitted information, we agree that the submitted data constitutes information that has come "to the attention of the investigatory panel of the Committee" and relates to an

³We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); *see also State Bar v. Wolfe*, 801 S.W.2d 202, 203 (Tex. App.—Houston [1st Dist.] 1990, no writ); *State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex. App.—Houston [1st Dist.] 1982, writ ref'd n.r.e.).

investigation in which there has not been “a finding of Just Cause and any Sanction other than a private reprimand”; thus, it is confidential under Rule 2.15 and “absolutely privileged” under Rule 15.10. We note that the phrase “absolutely privileged” in rule 15.10 is synonymous with “confidential” in section 81.033(a). *See, e.g.*, Attorney General Opinion JM-1235 (1990); *see also* Open Records Decision Nos. 384 at 2 (1983), 375 at 2 (1983). We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the submitted data is not subject to the Act and need not be released in response to this request. *See* Gov’t Code § 81.033(a). As we are able to make this decision, we need not address your remaining arguments regarding the submitted data.

In summary, because the database program functions solely as a tool to maintain, manipulate, or protect public property and has no independent relevance, it is not public information as defined by section 552.002 of the Government Code and need not be released in response to this request. The submitted data is confidential under Rules 2.15 and 15.10 and therefore, pursuant to section 81.033(a), is not subject to the Act and need not be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

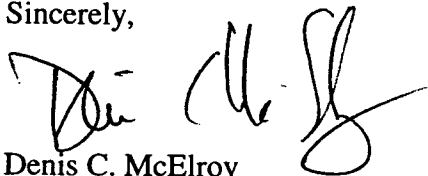
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 191904

Enc. Submitted documents

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